



December 28, 1999

Ms. Kimberley Mickelson  
Olson & Olson  
Three Allen Center  
333 Clay Street, Suite 3485  
Houston, Texas 77002

OR99-3787

Dear Ms. Mickelson:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "act"), chapter 552 of the Government Code. Your request was assigned ID# 132137.

The City of Friendswood (the "city") received a request for "[a]ny and all documentation sent or received from the Texas Attorney General's Office from November 16, 1999 through November 30, 1999." We understand you to contend that the portions of the information responsive to the request which relate to the city's pending requests for rulings from this office under chapter 552 are in "active use" and therefore not subject to disclosure at this time and that the responsive records contain information which may be protected from disclosure depending on how this office rules in response to the city's requests for attorney general decisions.

Section 552.221(c) of the Government Code provides that if requested information is unavailable at the time of the request because it is in "active use," an officer for public information may certify this fact in writing to the requestor and set a time when the information will be available. We do not believe that the information at issue is in "active use" within the meaning of section 552.221(c). *See, e.g.,* Open Records Decision Nos. 121, 148 (1976). Therefore, information may not be withheld from the requestor on this basis.

We agree however, that the portions of the submitted information which reveal the information at issue in pending requests by the city for decisions of this office under chapter 552 may be withheld, as well as information which is confidential by law. We believe that the act contemplates that a governmental body, which has properly sought an attorney general decision as to whether it may withhold information, is authorized to withhold that information until the attorney general orders its release. *See, Gov't Code* § 552.353 (that governmental body has sought an attorney general decision regarding release of information is defense to prosecution for refusal to make information available in response to request). Moreover, in requiring a governmental body to submit arguments to the attorney general as to whether requested information may be withheld and requiring that the requestor be provided a copy of the

governmental body's communication to the attorney general, the act permits the governmental body to redact the portions of the communication which disclose the information at issue. Gov't Code § 552.301(d)(2).<sup>1</sup>

The first item of information you submitted as responsive to the request, is a ruling from this office, Open Records Letter No. 99-3318 (1999), with the information at issue in the ruling attached. The ruling is public by nature and must be released. The attached information must be released except for those portions of the information the ruling permitted the city to withhold.

The next item you submitted appears to be copies of the city's request for an attorney general decision, a memorandum between city employees regarding the request, the corresponding request for information, guidelines as to fees in connection with the production of requested information, and the city's letter to the requestor notifying her that the city is seeking an attorney general decision. This request appears to be pending with the attorney general. However, it does not appear that these records reveal the information sought to be withheld in the city's request for a ruling. These records must be released.

The next item consists of material relating to another request, and includes the information at issue. The circled driver's license number must be withheld under section 552.130 of the Government Code, which protects, *inter alia*, information related to "a motor vehicle operator's or driver's license or permit issued by an agency of the state." The remaining information must be released.

The next item consists of another request by the city for an attorney general decision with accompanying materials, including the information at issue. If this matter was still pending in the attorney general's office at the time of the instant request, you may withhold the information at issue. The remaining information must be released.

The next two items are copies of materials already made available to the requestor here. These materials must be released.

The last item consists of another request by the city for an attorney general decision with accompanying materials, including the information at issue. If this matter was still pending in the attorney general's office at the time of the instant request, you may withhold the information at issue. The remaining information must be released.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

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<sup>1</sup>See also, Gov't Code § 552.302 (if governmental body fails to comply with requirements of section 552.301, information must be released unless there is a compelling reason for withholding).

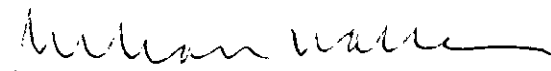
This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



William Walker  
Assistant Attorney General  
Open Records Division

WMW/ljp

Ref: ID# 132137

Encl. Submitted documents

cc: Mr. Jeff Branscome  
308 Woodstream Circle  
Friendswood, Texas 77546  
(w/o enclosures)